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REPORT OF THE PROVINCIAL/MUNICIPAL WORKING COMMITTEE ON OPEN MEETINGS AND ACCESS TO INFORMATION

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AMO

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BACKGROUND

The Committee was formed in April, 1983 at the request of the Honourable Claude F. Bennett, Minister of Municipal Affairs and Housing. The Committee is composed of representatives from the Association of Municipalities of Ontario, the Association of Municipal Clerks and Treasurers of Ontario and the Ministry of Municipal Affairs and Housing. The terms of reference of the Committee were established after consultation among the three organizations concerned. The purpose of the Committee is to ". . . study the subject of municipal procedural by-laws containing provisions with respect to open/closed meetings and information access within Ontario, as well as, procedures and policies of other jurisdictions, for the purpose of developing a model procedure guide for municipal councils in this respect".

The establishment of the Committee flows from several recent events which have raised the profile of these issues. The Report of the Commission on Freedom of Information and Individual Privacy (Williams Commission) was published in the fall of 1980. The Williams Commission recommended a new freedom of information law which would contain the following features:

(1) A general right of any person to obtain access to government-held documents;

(2) Ten categories of exemptions to protect the legitimate needs of government for confidentiality; and

(3) An independent and authoritative mechanism for reviewing appeals against decisions to release or withold information.

In order to accomplish these general objectives, several administrative and legislative changes were proposed. The major specific recommendations were as follows:

(a) The government would publish a general directory of all government-held information.

(b) Each government institution would be required to publish an inventory of all personal data collected about individuals. This inventory would show the nature of the information, the legal authorization for having it, the categories of people about whom the records are kept and the principle use(s) of the information.

(c) Government institutions would have to obtain an individual's consent before information given them for one purpose was used for another.

(d) Citizens would have the right to examine records about themselves and be allowed to seek correction of errors.

The Williams Commission recommended that the proposed Freedom of Information and Protection of Privacy statutes apply to all provincial government ministries, agencies, boards and commissions as well as to municipal government. In addition, both the Commission and one of its background reports entitled Freedom of Information in Local Government in Ontario recommended that a "sunshine" law be passed which would require municipal councils and other local bodies to hold open meetings with a limited number of exceptions.

The Commission's recommendations with regard to local government followed a good deal of public commentary and criticism concerning the alleged lack of openness of some municipal councils in the Province. It appears that some municipal councils employ lengthy, in-camera special and committee meetings to discuss matters under debate and then ratify their decision in full council in a few minutes, with minimal discussion.

This practice prevents the public from knowing the real reasons for decisions, possible alternative courses of action, and the report or reports upon which decisions are based. While this practice complies with the letter of the Municipal Act, it certainly is not in accord with the growing demand for public knowledge of and input into municipal decisions.

The Minister of Municipal Affairs and Housing has received many letters from citizens complaining about the alleged lack of openness of municipal councils in their areas. The Ontario Press Council has led a campaign for legislative action. In 1981, Marion Bryden (N.D.P., Beaches-Woodbine) introduced a Private Member's Bill in the Legislature which would have legislated open meetings. Recent amendments to the Education Act require open meetings for school boards, with certain stated exceptions.

In August, 1981, the Honourable Claude Bennett, Minister of Municipal Affairs and Housing, told the founding convention of the Association of Municipalities of Ontario that the practice of holding closed meetings all, or most, of the time is unacceptable. He said that if municipal councils did not voluntarily heed his request for greater openness, legislative changes might be required. The Minister did say, however, that he was reluctant to legislate in this area, citing the need to take local needs and circumstances into account and the difficulties associated with enforcing such legislation.

Principles

There are several reasons for creating a presumption in favour of openness and access at the local level or, at the very minimum, for clarifying and rationalizing the policy and legislative provisions which now exist. These are:

- the need to foster essential democratic values;
- the existence of statutory provisions and legal precedents which favour secrecy or at least work against the development of more open practices; and, finally,
- an apparent desire on the part of the electors for more responsive governments at all levels.

The basic reason for supporting open meetings and access-to-information provisions at the local level is to foster and promote values considered essential to the democratic process. If electors are to choose their leaders intelligently; evaluate decisions and judge the decision-makers; correct misinformation; respond to policy initiatives; and avail themselves of the opportunity to shape their own communities, knowledge and involvement are key.

To become knowledgeable, citizens need access to the same information as the decision-makers have before decisions are made. The public should be made aware of the considerations upon which governmental decisions are made. They should be allowed to go behind and beyond the decisions made to see the advantages and disadvantages and possible consequences of various courses of action. Ideally, the information made available to them should be timely and presented in a form which is both usable and comprehensible. With this information, involvement becomes meaningful. Hence the further and corresponding need for citizens to be able to attend meetings, hear deliberations and make representations before municipal councils.

Certain benefits can be expected to accrue where information is available and meetings are open, among them more accurate information and reporting and a higher level of public debate. In such an environment, citizens are more likely to understand the significance of particular issues and are more likely to accept decisions when they are made. Local government is likely to become more responsive, accountable and better able to discern public reaction to policy and program initiatives if access to information/open meetings legislation is enacted.

Openness and access are in large part an attitude and a frame of mind reflecting distinctly local values. Provincial standards alone cannot guarantee their adoption or application locally. If significant change is to be effected, it will require a fundamental change in attitudes more than mere legislative reforms. However, it is not sufficient to leave the enunciation or development of openness and access concepts to the local level or to the exercise of municipal discretion. The Province must accept its responsibility and provide leadership by creating these rights in law in order to give a positive impetus to provincial and municipal practice and a guideline to the courts. There is some need for a measure of province-wide uniformity to ensure that a citizen in Dryden and a citizen in Toronto can expect substantially the same degree of openness and access from his/her local government.

It is the Committee's belief that the Province can effect these ends by establishing minimum standards within which municipalities shall operate, leaving to them the option of supplementing these standards as desired. It would be open to municipal councils to help define how the standards would be applied to meet local priorities or procedural variations.

PART I - OPEN MEETINGS

The first meeting of the Provincial/Municipal Working Committee on Open Meetings and Access to Information was held on April 25th, 1983. It became readily apparent to the Committee that the subject matter for its consideration could be logically divided into two related but distinct issue areas: first, the openness of council and committee meetings; and second, access to information.

The Committee agreed that the latter category would require considerable time and study whereas the question of the openness of meetings seemed to be more readily resolvable. Consequently, it was agreed that the Committee would initially direct its attention to the necessity for open meetings and a method of ensuring and enforcing such a policy. Part II of the Report contains the Committee's recommendations with respect to the issue of access to information.

This part of the Report addresses the following subjects:

(1) Open Meetings;
(2) Exceptions;
(3) Procedural By-laws;

(1) Open Meetings

The Committee in its deliberations concluded quickly that provisions requiring open meetings should be contained within the by-law governing procedure of each municipality. As will be seen below, this raised an immediate concern in that there are presently a large number of municipal councils which operate without the benefit of a procedural by-law (Approximately fifty per cent of all municipal councils in the Province had a procedural by-law in 1980).

Subsection 55(1) of the Municipal Act provides:

> "The meetings, except meetings of a committee including a committee of the whole, of every council and of every local board as defined by the Municipal Affairs Act, except boards of commissioners of police and school boards, shall be open to the public, and no person shall be excluded therefrom except for improper conduct."

Similar provisions exist in the several Acts establishing the regional, district and metropolitan municipalities and the County of Oxford. This legislation provides a rather qualified policy that meetings of council shall be

open to the public. It is apparent that a municipal council is left with an absolute discretion as to which matters shall be discussed in public and which can be resolved behind closed doors. The issue becomes even grayer when one reads Section 58. This Section deals with special meetings of council and allows council to decide whether the meeting is open or closed. There is a limit on the council's discretion in this instance in that there must be a resolution stating whether the meeting is open or closed to the public and the resolution must indicate the public interest for so doing. That Section reads:

> "58. If there is no by-law or resolution fixing the place of meeting, a special meeting shall be held at the place where the then last meeting was held, and a special meeting may be either open or closed as in the opinion of the council, expressed by resolution in writing, the public interest requires."

The Committee was concerned whether this Section would permit the enactment of a by-law at a meeting closed to the public and after some study concluded that this may in fact be possible.

The Committee recommends that the legislation be clarified to ensure that by-laws be enacted at an open meeting of council only. In addition, resolutions which are passed by a committee, including a committee of the whole council, whether that meeting is open or closed, shall only bind a municipality if ratified at a meeting of council, which of necessity must be open.

The current legislation can be briefly summarized as follows:

- Regular meetings of council are open to the public;
- Special meetings of council may be open or closed as, in the opinion of council, the public interest requires;
- Committee meetings, including a committee of the whole council, may be open or closed at the absolute discretion of council or the committee.

The members of the Working Committee determined that meetings of council should be open to the public. Therefore, the basis of this Paper is that:

> All council meetings, regular or special, shall be open to the public. All meetings of committees of council shall be open to the public except meetings which are called to consider those special circumstances, which as expressly permitted by the statute, may be considered at a closed meeting.

This recommendation is in accord with the position taken by AMO in its submission to the Williams Commission in 1978 (see Appendix).

(2) **Exceptions**

While it is desirable that all council meetings be open to the public, the Committee recognized that there are certain situations in which open meetings would not serve the public interest or the interest of the municipal corporation. In particular, the Committee noted the need to protect the privacy of individuals, the interests of the municipality when an adversial relationship exists between the municipality and a third party and the right of individuals and companies to maintain a competitive position in the marketplace. Accordingly, some exceptions to the general rule of openness are required.

However, drafting exceptions too broadly makes meaningless the general intent of openness of municipal business to the public. On the other hand, narrowly drafted exceptions could place the municipal corporation at a severe disadvantage in litigation and property matters.

The three broad areas discussed by the Committee were personnel, property and litigation matters. The Committee examined the Report of the Commission on Freedom of Information and Individual Privacy entitled, "Freedom of Information in Local Government in Ontario". There is an excellent discussion of the exceptions contained on pages 55 and following in that report.

Recent amendments to the Education Act reflect this general philosophy. In 1982, Subsection 183(1) was repealed and the following was enacted:

> "(1) The meetings of a board and, subject to subsection (1a), meetings of a committee of the board, shall be open to the public, and no person shall be excluded from a meeting that is open to the public except for improper conduct.
>
> (1a) A meeting of a committee of a board, including a committee of the whole board, may be

closed to the public when the subject matter under consideration involves,

(a) the security of the property of the board;

(b) the disclosure of intimate, personal or financial information in respect of a member of the board or committee, an employee or prospective employee of the board or a pupil or his parent or guardian;

(c) the acquisition or disposal of a school site;

(d) decisions in respect of negotiations with employees of the board; or

(e) litigation affecting the board."

The amended Section 183 of the Education Act provides a basis upon which to develop legislation for municipal councils. However, the term "litigation" was of particular concern to the Committee. The definition of "litigation" in Black's Law Dictionary reads,

> "A contest in a Court of Justice for the purpose of enforcing a right ... a judicial contest, a judicial controversy, a suit at law."

This definition would appear to be too narrow for municipal purposes. There are a number of situations where a municipality may be involved in litigation before an administrative tribunal on a matter which would have a detrimental effect on the municipality's position if the deliberations of council were open to the public. For example, an expropriation case before the Land Compensation Board to determine appropriate compensation would fall into this category.

In addition, the Committee discussed at length the matter of confidentiality in preliminary discussions with developers. Usually, companies do not want their identities released until preliminary negotiations with the municipality are completed. Development opportunities often have to be dealt with quickly or they are lost. The Committee agreed that it is important to include an exception to provide for this situation.

The Committee therefore recommends that the following exceptions be included in any future legislation respecting municipal councils:

- Personnel matters involving one or more identifiable employees or prospective employees;

- Matters affecting labour relations and contract negotiations with employees;

- The acquisition or disposal of municipal real property;

- Exploratory discussions respecting a future development within the municipality, except where such development has been discussed at an open meeting of council;

- Litigation or potential litigation affecting the municipality, including matters before administrative tribunals;

- Discussions in relation to the Municipal Boundary Negotiations Act, 1981;

- Any matter required by any provincial or federal statute or regulation thereto to be discussed at a meeting closed to the public;

- Any matter involving the security of the property of the municipality;

- Any matter respecting the investigation of a possible contravention of a municipal by-law, or provincial statute or regulation;

- Discussions concerning bids, quotations or tenders submitted to or by the municipality for any contracted works, services or equipment. Nothing herein precludes any requirement to disclose the total price of all bids, quotations or tenders.

It should be noted that the exceptions listed above are intended to be permissive rather than mandatory.

(3) Procedural By-law

The Committee's discussions focused, in large measure, on the necessity for a procedural by-law. At present there is no requirement for municipalities to enact such a by-law. Indeed, approximately one-half of all municipalities in the Province of Ontario do not have a procedural by-law.

The second major premise of this report is that any new legislation should require that:

All municipalities shall enact a Procedural By-law.

This is certainly a desirable principle, but it does raise two questions. First, what should be included in the by-law? Second, what assurance can be given that such a by-law will be followed by a municipal council?

The draft legislation appended to this Report makes provision for certain minimum requirements which must be included within the procedural by-law. Included in the list is the necessity for open meetings as discussed above.

On the matter of enforcement, the Committee examined three issues. First what are the consequences of failing to enact a procedural by-law? Second, what are the consequences of a council ignoring a procedural by-law which has been properly enacted? Third, what are the consequences of improperly enacting a procedural by-law.

Two approaches were discussed by the Committee. The legislation could provide that where a council fails to enact a procedural by-law, the legislation or a regulation thereunder would impose a standard procedural by-law. However, the Committee did not favour this approach. Rather, the Committee preferred to recommend that the Clerk be required to provide each council member with a copy of the municipality's procedural by-law at the time that members make their Declaration of Office. This procedure would ensure that council members are aware of the existence of the municipality's procedural by-law and of the consequences of not having a procedural by-law in place.

In addition, there are existing provisions in the Municipal Act which should serve to encourage municipal councils to comply with their procedural by-laws. Part IX of the Act, set out in part below, provides that any bylaw of a municipality which has been improperly enacted may be quashed in whole or in part. This could mean either the improper enactment of a procedural bylaw or the failure to enact the bylaw at all. Moreover, bylaws or resolutions on other matters could also be subject to an application to quash as a direct result of a municipality acting without a procedural bylaw, acting under an improperly enacted procedural bylaw or failing to adhere to a procedural bylaw in carrying out municipal business. Selected sections of Part IX of the Municipal Act follow:

> "138. In this Part, 'by-law' includes an order or resolution.
>
> 139(1). The Supreme Court upon application of a resident of the municipality or of a person interested in a by-law of its council may quash the by-law in whole or in part for illegality.

140(1) Where it is alleged that a by-law injuriously affects another municipality or any ratepayer of it, and that the by-law is illegal in whole or in part, the corporation of such other municipality or any ratepayer of it may apply to quash the by-law.

141. An application to quash, in whole or in part, a by-law, except a money by-law registered under Section 156, shall not be entertained unless made within one year after the passing of the by-law, but, if the by-law required the assent of the electors and was not submitted for or did not receive such assent, the application may be made at any time."

The Committee was also concerned with ensuring that members of council are aware of and familiar with the contents of their procedural by-law. Some councils may perceive a procedural by-law to be a nuisance. Yet, there can be no better device to control undesirable situations at a meeting. For example, if a delegation becomes too lengthy or unruly, the chairman and the council may rely upon the procedural by-law to limit debate and restore order. Adherence to a procedural bylaw can also ensure that meetings are efficient and expeditious. Members of council should be reminded from time to time of its existence in order to ensure that the provisions of the bylaw are not being abused or overlooked. If the Committee's recommendations are enacted, the Province, AMCTO and AMO should undertake to ensure that the benefits of having a procedural by-law are sufficiently explained to members of councils and to municipal clerks.

As mentioned above, the Committee viewed the swearing in of new councils as an appropriate time to have members made aware of the existence of a procedural by-law. At present, Section 96 of the Municipal Act requires every member of a council, trustee of a police village and Public Utility Commissioner to subscribe a Declaration of Office and an Oath of Allegiance. The Committee recommends that the Clerk of the municipality be required to provide each member of council with a copy of the procedural by-law at the time members make their Declaration of Office.

In order to ensure that this requirement can be fulfilled, it would be necessary for the new legislation to require all councils to have a procedural by-law in place prior to the next election in November of 1985. It is therefore recommended that there be a one-time provision requiring that all municipalities shall have in place a by-law governing procedure on or before September

1, 1985. The procedural by-law could be amended but not repealed.

SUMMARY OF MAJOR RECOMMENDATIONS

OPEN MEETINGS

(See the draft legislation appendixed on pages 17 - 21)

1. All council meetings, regular or special, shall be open to the public. (s.s. 54(1))

2. A meeting of a committee of council, including a committee of the whole, may be closed to the public only when the subject matter under consideration involves those matters expressly permitted by statute which may be considered at a closed meeting. (s.s. 54(2))

3. All municipal councils shall provide reasonable public notice of all meetings of council. (s.s. 54(5))

4. When a meeting of a committee of council, including a committee of the whole, is closed to the public, the clerk shall provide the reason in writing for not permitting access to the public. (s.s. 54(3), s.s. 54(8))

5. By-laws shall only be passed at a meeting of council which is open to the public. (s.s. 54 (10))

6. All municipal councils shall enact a procedural by-law on or before September 1, 1985 which shall contain provisions for open meetings. (s.s. 52(1), s.s. 52(2))

7. The Clerk of the municipality should be required to provide each member of council with a copy of the procedural by-law at the time when members make their Declaration of Office. (2.2. 52(3))

CONCLUSION

In addition to the provisions respecting the openness of meetings, the effect of the draft legislation contained in the Appendix is to require municipal councils to incorporate into their by-laws a number of provisions currently contained in the Municipal Act. Section 54 of the draft legislation provides a minimum standard for municipal councils to follow in enacting the by-law governing procedure.

The recommendations contained in this Report clarify, in the Committee's view, the provisions relating to open/closed meetings. The requirement that councils pass a procedural by-law becomes the vehicle for implementing the new principles. In addition, the format will allow for an ongoing review by councils of their procedural by-laws.

It is hoped that the recommendations requiring implementation by 1985 will allow for the necessary input from the many interested parties before the final enactment of amendments to the Municipal Act.

PART II - ACCESS TO INFORMATION

The Legal Situation

The Committee began its deliberations on the issue of access to information with an examination of Section 78 of the Municipal Act. This section provides the public with a limited right to inspect the formal records of council. Subsection 78(1) reads as follows:

> "Except as otherwise provided in any Act, any person, at all reasonable hours, may inspect any records, books, accounts and documents in the possession or under the control of the clerk, except inter-departmental correspondence and reports of officials of any department or of solicitors for the corporation made to council, board of control or any committee of council, and the clerk within a reasonable time shall furnish copies of them or extracts therefrom certified under his hand to any applicant on payment at the rate of 10 cents for every 100 words or such other rate as the council may fix."

The Acts establishing the regional, district and metropolitan municipalities and the County of Oxford have similar provisions. Legal opinion appears to support the view espoused by Stan Makuch and John Jackson in a report for the Williams Commission on Freedom of Information and individual Privacy that "...public knowledge is not guaranteed by any means in the Municipal Act today."

In the minimal case law that exists, the courts have interpreted the above provision very narrowly to mean access to documents of significance in the possession of the clerk (e.g. by-laws, resolutions and certain financial information). Although there are specific rights to information and notice that accrue to an individual under the common law principles of natural justice (e.g. in cases where the municipality or local board is granting or cancelling a licence), the individual has these rights because of his status as a specially affected party and not as a member of the general public. Given the current state of the law, there is little reason to be optimistic that the courts will create a right to know, or construe the provisions of the Municipal Act in such a way as to facilitate the development of such a right.

After having examined the Ontario statutes, the Committee investigated the legislation in the other nine provinces which governs access to information at the municipal level. This investigation revealed that the legislation in the other provinces is remarkably similar to that of

Ontario, with minor variations. In many cases the wording is identical which suggests that some other provinces simply adopted the Ontario provisions with minor changes to suit local circumstances. Overall, the review of the legislation in other provinces did not suggest many new ideas or directions.

The Committee also examined the procedural by-laws which currently exist in Ontario municipalities in order to determine how individual municipalities respond to requests for information from citizens. Clerks and Clerk-Treasurers of each municipality in the Province were requested to submit a copy of any policy statement or by-law they might have on open meetings and/or access to information. Approximately one hundred replies were received. The majority of those replying indicated that their municipality did not have any policy guidelines or by-laws which addressed the issue of access to information. However, a small number of municipalities had very detailed policies regarding access to information and this data was very useful to the Committee. The Town of Dundas and the Cities of London, Kingston, Kitchener, Etobicoke, Sault St. Marie, Windsor and York stand out in this respect.

The Committee also studied the Report of the Williams Commission on Freedom of Information and Individual Privacy and several of the research reports prepared for the Commission. The Committee came away with the impression that while the Williams Commission Report was very thorough and workmanlike and the recommendations were quite laudatory, it really did not address the administrative implications of the implementation of its recommendations at the municipal level. This is perhaps not surprising given that the Commission's emphasis was on the provincial government. Nevertheless, the Committee felt that it was unrealistic to expect small municipalities with limited staff and other resources to meet the same standards as provincial ministries. The Committee was informed, for example, that some small municipalities do not have a photocopier with which to facilitate ready provision of information on demand. Nevertheless, the Municipal Act now requires them to provide copies of or extracts from certain books, records, and documents to members of the public.

SUMMARY OF MAJOR RECOMMENDATIONS

ACCESS TO INFORMATION

(See the draft legislation appendixed on pages 22 - 24)

Based on the Committee's acceptance of the principle of the public's right of access to information and having determined that legislation is necessary which would prescribe minimum standards of access to information at the municipal level, the Committee discussed at length the details of the proposed legislation. The Committee took great care to ensure that proposed legislation would not place an unrealistic or onerous burden on small municipalities with limited staff and other resources.

The Committee concluded that the revised legislation should contain the following elements:

(8) The list of documents currently available to the public for inspection should be expanded to include most factual material in the possession of the municipal corporation. (s.s. 78a(2))

(9) The above requirement should not apply to documents in the possession or under the control of the municipal solicitor. (clause 78a(o))

(10) The list of exceptions to the general right of access should be precise and limited and should parallel the list of exceptions contained in the proposed open-meetings legislation. (s.s. 78a(3))

(11) Municipalities should be given reasonable notice of requests for information and should be permitted to levy fees in order to recover the costs incurred to provide documents. (s.s. 78a(1)

(12) There should be an avenue of appeal for citizens who are refused information by municipal employees, and appeals should be heard within a reasonable period of time. (s.s. 78a(4))

(13) Documents which were confidential at the time of discussion should, in certain circumstances, be released after a final decision has been made. (clause 78a(c))

(14) The clerk should prepare an index of all by-laws which should be consolidated at least every five years. (s.s. 78b(2)), s.s. 78b(3))

(15) The section of the Municipal Act which permits the Ministry of Municipal Affairs and Housing to approve the destruction of municipal documents should be repealed. (It appears that this provision is seldom used since most municipalities ask their auditor for permission to destroy documents.)

OTHER ISSUES DISCUSSED BUT WITHOUT RECOMMENDATIONS

In the course of its deliberations the Committee discussed but did not arrive at a firm recommendation on a number of other issues. These include:

- The premature release of privileged information by individual councillors. This is a serious problem in many municipalities. However, the committee concluded that it would be very difficult to identify and/or punish offenders.

- The Committee noted the difficulty of enforcing penalties for improper conduct at council meetings.

- The practice of many municipal councils of giving all readings of by-laws at a single meeting with the result that public comment is difficult was noted.

- The Committee noted that given the current state of computer technology it is difficult to determine what constitutes an original document. Many documents are created by computer or word processing systems and thus no "original" document exists.

DRAFT LEGISLATION

The Committee concluded that in order to make clear the nature of our recommended approach, draft legislation should be prepared to replace Subsection 78(1) of the Municipal Act. The draft legislation appended contains the Committee's suggested method of translating philosophical principles into a practical and workable policy

on access to information. The draft legislation is not submitted as the definitive or only method of achieving greater access to information at the municipal level. However, it is the Committee's view that draft legislation often stimulates greater interest and discussion and yields more useful results than grand debates on philosophical principles conducted at a high level of abstraction.

APPENDIX

OPEN MEETINGS - DRAFT LEGISLATION

REVISED (A) Section 104 is amended by striking out the words "and for governing the proceedings of the council, the conduct of its members and the calling of meetings" in the fifth, sixth and seventh lines.

(B) Sections 52 to 66 are hereby repealed and the following substituted therefor:

Council Procedure

NEW 52(1) Every council shall enact and have in force a by-law governing the proceedings of the council, the conduct of its members and the calling of meetings in accordance with this Part.

NEW (2) Every council shall enact a by-law pursuant to subsection (1) above on or before the first of September, 1985.

NEW (3) The clerk of every municipality shall provide each member of council with a copy of the municipality's by-law governing procedure at the time the member makes the Declaration of Office.

NEW (4) Nothing herein shall prohibit a council from amending from time to time the by-law provided for in subsection (1).

53 In this part, "reasonable public notice" means

NEW (a) the posting of a notice in a prominent place which notice shall state the time, date and location of the meeting and, except in the case of a closed meeting, shall include the time and location at which the agenda for the meeting may be viewed.

NEW (b) such additional notice as council determines.

NEW 54 The by-law provided for in subsection 52(1) shall include the following provisions:

NEW (1) Subject to subsection (2) all council meetings, regular or special, and all meetings of committees of council, including a committee of the whole, shall be open to the public, and no

person shall be excluded from a meeting that is open to the public except for improper conduct.

NEW (2) A meeting of a committee of council, including a committee of the whole, may be closed to the public when the subject matter under consideration involves,

NEW (a) personnel matters involving one or more identifiable employees or prospective employees;

NEW (b) matters affecting labour relations and contract negotiations with employees;

NEW (c) the acquisition or disposal of municipal real property;

NEW (d) exploratory discussions respecting a future development within the municipality;

NEW (e) litigation or potential litigation affecting the municipality, including matters before administrative tribunals;

NEW (f) discussions in relation to the Municipal Boundary Negotiations Act, 1981;

NEW (g) any matter required to be discussed at a meeting closed to the public by any provincial or federal statute or regulation thereto;

NEW (h) any matter involving the security of the property of the municipality;

NEW (i) any matter respecting the investigation of a possible contravention of a municipal by-law, or provincial statute or regulation; or

NEW (j) bids, quotations or tenders submitted to or by the municipality for any contracted works, services or equipment. Nothing herein precludes any requirement to disclose the total price of all bids, quotations or tenders.

NEW (3) When a meeting of a committee of council including a committee of the whole is closed to the public, the reason for not permitting access to the public in accordance with subsection (2) shall be included in the minutes of the next council meeting.

REVISED (4) The by-law shall specify the time and location of the regular meetings of council.

NEW (5) Every council shall provide reasonable public notice to the public of all council meetings, regular or special, and all meetings of committees of council including a committee of the whole.

EXISTING (6) (a) Where a vote is taken for any purpose and a member requests, immediately prior or immediately subsequent to the taking of the vote, that the vote be recorded, each member present, except a member who is disqualified from voting by any Act, shall announce his vote openly, and any failure to vote by a member who is not disqualified shall be deemed to be a negative vote and the clerk shall record each vote.

EXISTING (b) No vote shall be taken by ballot or by any other method of secret voting, and every vote so taken is of no effect.

NEW (7) The by-law provided for in subsection 52(1) shall contain provisions respecting the nature and manner of the giving of reasonable notice to the public of all council meetings, regular or special, and all meetings of committees of council.

NEW (8) Where a meeting is to be held which is closed to the public in accordance with subsection (2), notice of the meeting shall state the reason for not permitting access to the public.

NEW (9) Notwithstanding subsection (5), where it is determined during a council meeting that a committee meeting closed to the public is required to consider a matter referred to in subsection (2), a resolution shall first be enacted by council which shall state the reason for not permitting access to the public.

NEW (10) By-laws shall only be passed at a meeting of council which is open to the public.

NEW (11) Any resolution passed at a meeting of a committee of council, including a committee of the whole, shall, where such meeting is closed to public in accordance with subsection (2), be adopted at a meeting of council.

EXISTING (12) The head of the council shall preside at all meetings of the council.

EXISTING (13) The head of the council may at any time summon a special meeting, and upon receipt of the petition of the majority of the members of the council, the clerk shall summon a special meeting for the purpose and at the time mentioned in the petition.

NEW (14) Where a special meeting is held pursuant to subsection (13), no matter shall be discussed except that for which the meeting was called.

REVISED (15) If there is no by-law or resolution fixing the place of meeting, a special meeting shall be held at the place where the then last meeting was held.

EXISTING (16) A council may adjourn its meetings from time to time.

NEW (17) Provisions respecting delegations before council or a committee of council, which provisions shall provide for fair and orderly presentations within a reasonable time limit.

NEW (18) Nothing in subsection (17) shall prohibit a council from permitting delegations to appear only before a committee of council including a committee of the whole council.

EXISTING (19) A majority of the whole number of members required to constitute a council is necessary to form a quorum.

REVISED (20) In the absence of the head of the council, or if his office is vacant, or if he refuses to act, the council may, from among the members, appoint by by-law a presiding officer who, during such absence or vacancy or refusal to act, has all the powers of the head of the council.

REVISED (21) If the person who ought to preside at any meeting does not attend within fifteen minutes after the hour appointed, the members present may appoint by resolution a presiding officer from among themselves and he has the same authority as the absent person would have had if present.

EXISTING (22) The head of the council, or the presiding officer, except where he is disqualified to vote by reason of interest or otherwise, may vote with the other members on all questions, and, except

where otherwise expressly provided by this Act, or any other Act, any question on which there is an equality of votes shall be deemed to be negatived.

NEW (23) Notwithstanding subsection 78a(2), the agenda and appended material to be considered at a meeting of council or a committee of council including a committee of the whole shall be made available to the public for viewing prior to that meeting, at a time determined by council.

NEW (24) Such other provisions as, in the opinion of council, are necessary to conduct properly the business of council and any committee of council including a committee of the whole council.

EXISTING 55. The first meeting of a county council shall be held at the county hall if there is one, and if there is none, at the Court House.

EXISTING 56(1) The council of a county in which an urban municipality lies may hold its meetings, keep its public offices and transact all the business of the corporation and of its officers and servants within such municipality and may acquire or rent and hold such real estate therein and erect such buildings thereon as may be convenient for such purpose.

EXISTING (2) The council of a township has the like power in respect of an adjacent urban municipality or township in the same county.

EXISTING 57. The head or other presiding officer may expel or exclude from any meeting, any person who has been guilty of improper conduct at the meeting.

EXISTING 58. Where a council consists of only five members, the concurrent votes of at least three of them is necessary to carry any resolution or by-law.

REVISED 59. The council of a county may by by-law provide that a member who in council has an additional vote by virtue of subsection 27(2), subsection 28(2) or subsection 29(2), shall as a member of any committee have an additional vote therein.

ACCESS TO INFORMATION - DRAFT LEGISLATION

(A) Subsection 78(1) is repealed and the following substituted therefore:

78a(1) in this Section,

NEW "access fee" means an amount calculated by reference to a rate established by council and which does not exceed the actual cost of locating the document concerned;

NEW "copying fee" means an amount calculated by reference to a rate established by council and which does not exceed the actual cost of copying the document concerned;

NEW "document" includes any records, books, by-laws, resolutions, accounts, invoices, vouchers, final consultants reports, final budget documents, minutes, reports and agendas of council, board of control or a committee of council, information respecting the organization of the municipal administration, statements of general policy or interpretation of general applicability formulated or adopted by council, information respecting established programs and policies of council or the corporation, or final decisions of an administrative tribunal, in printed form;

NEW "judge" means a judge of the county or district court of the county or district in which the municipality is situate, or if, through illness or absence there is no judge of that court able to act, a judge of the county or district court of a county or district that adjoins the county or district in which the municipality is situate.

REVISED (2) Except as otherwise provided by or under any Act, any person at all reasonable hours and upon reasonable notice, may, upon application to the clerk and payment of an access fee, if required by council, inspect any document of the corporation, and may, within a reasonable period of time and where practical, upon payment of a copying fee, if required by council, receive copies of any such document.

(3) Subsection (2) does not apply to any documents or parts thereof concerning:

REVISED (a) inter-departmental or intra-departmental correspondence;

NEW (b) architects' and engineers' drawings or other documents protected by copyright which have been filed with the municipality;

NEW (c) personnel matters involving one or more identifiable employees or prospective employees;

NEW (d) matters affecting labour relations and contract negotiations with employees;

NEW (e) the acquisition or disposal of municipal real property except where such acquisition or disposal has been made;

NEW (f) exploratory discussions respecting a future development within the municipality except where such development has been discussed at an open meeting of council;

NEW (g) litigation or potential litigation affecting the municipality, including matters before administrative tribunals;

NEW (h) information relating to discussions pursuant to the Municipal Boundary Negotiations Act, 1981;

NEW (i) information, the availability of which is restricted by a federal or provincial statute or a regulation thereto;

NEW (j) matters discussed or to be discussed at a meeting of a committee of council, including a committee of the whole, which is closed to the public;

NEW (k) the investigation of a possible contravention of a municipal by-law, or provincial statute or regulation where such investigation does not result in court proceedings;

NEW (l) computer programs and any supporting documentation used by the municipality;

NEW (m) the security of the property of the municipality; or

NEW (n) bids, quotations or tenders submitted to or by the municipality for any contracted works, services or equipment. Nothing herein precludes any requirement to

disclose the total price of all bids, quotations or tenders;

NEW (o) any document in the possession or under the control of the municipal solicitor.

NEW (4) Where a person applies for information under this section and is refused, he may appeal such refusal to the council by giving notice in writing of his intention to appeal to the clerk who, upon receipt of such notice, shall place the appeal on the agenda of the next meeting of council and the appeal shall be determined.

NEW (5) Where an appeal under subsection (4) is to be heard by a committee of council, the committee shall hear and determine the matter within thirty days of the filing of the appeal described in subsection (4).

NEW (6) Where a person appeals a refusal to release information to council under subsection (4) and is dissatisfied with the decision of council in respect of the matter, he may apply to a judge for an order requiring the release of the information and the court upon receipt of the application shall hear and determine the matter.

NEW (7) The Statutory Powers Procedure Act does not apply to an appeal before the council under subsection (4) or subsection (5).

NEW 78b(1) The clerk of every municipality shall prepare and keep in his possession an index of by-laws.

NEW (2) The index mentioned in subsection (1) shall be prepared by the first day of September 1986 and the index shall be updated annually and consolidated at least every five years.

Appendix II

OPEN MEETINGS AND ACCESS TO INFORMATION

Summary of Major Legislative Proposals (Municipal Act)

	Issue	Current Legislation	Recommendation in 1984 Committee Report
1.	Whether every council shall enact a by-law governing procedure	optional, approximately 50% of all municipal councils now have a procedural by-law.	Mandatory by September 1, 1985.
		Section 104	Subsections 52(1), 52(2)
2.	Whether the clerk shall provide each member of council with a copy of the by-law governing procedure.	no provision	mandatory at the time when members make Declaration of Office.
			Subsection 52(3)
3.	Whether special meetings of council must be open	may be either open or closed as in the opinion of the council, expressed by resolution in writing the public interest requires.	must be open.
		Section 58	Subsection 54(1)
4.	Whether meetings of Standing Committees or the Committee of the Whole Council may be closed to the public.	may be open or closed at the absolute discretion of council.	May be closed to the public only when the subject matter under debate involves those matters expressly permitted by statute which may be considered at a closed meeting; ten specific suggested subject areas.
		Subsection 55(1)	Subsection 54(2)

Issue	Current Legislation	Recommendation in 1984 Committee Report
5. Whether clerk shall provide the reason in writing for holding a closed committee meeting.	closed special meeting requires resolution in writing but no reason. Closed committee meetings, no reason required. Subsection 55(1), Section 58	When closed committee meeting is held the reason for not permitting access to the public shall be included in the minutes of the next Council meeting and in the notice of the Committee meeting. Subsections 54(3), 54(8), 54(9).
6. Whether every council shall provide reasonable public notice of all council meetings, regular or special, and all meetings of Committees of Council.	Number and timing of holding regular council meetings to be decided by Council except the place of the first meeting of county council which is fixed by statute. Notice of special meetings required for council members. Section 53, Subsection 57(2)	every council to provide public reasonable notice of all council meetings and all meetings of Committees of Council. Subsection 54(5) Section 53.
7. Whether procedural by-law shall contain provisions respecting the nature and manner of the giving of reasonable public notice of all meetings.	optional if a procedural by-law exists.	mandatory, including posting of public notice with time, date, location of meeting and time and place where agenda of meeting may be viewed. Section 53, Subsection 54(5).

	Issue	Current Legislation	Recommendation in 1984 Committee Report
8.	Whether by-laws may be passed at a special meeting closed to the public.	unclear	no
9.	Whether special meetings may consider matters except that for which the meeting was called.	unclear, may be possible in certain circumstances	Subsection 54(10) no matter shall be discussed except that for which the meeting was called.
10.	Whether procedural by-law shall contain provisions respecting delegations before Council or a Committee of Council	optional if procedural by-law exists Section 104	Subsection 54(14) mandatory
11.	Whether agenda and appended material to be considered at a meeting of council or a Committee of Council shall be made available to the public for viewing prior to the meeting.	optional Section 104	Subsection 54(17) mandatory at a time determined by council. Subsection 54(23)

Issue	Current Legislation	Recommendation in 1984 Committee Report
12. Whether councils can charge a fee for locating documents which does not exceed actual cost.	no	yes
13. Whether councils can charge a fee for copying documents which does not exceed actual cost.	may charge a fee set by council	Subsection 78a (1), Subsection 78a(2) Yes
14. Whether any person may inspect any records, books, accounts and documents.	at all reasonable hours, within a reasonable time but only documents in the possession or under the control of the clerk, except interdepartmental correspondence, reports of officials or solicitors made to Council or a Committee of Council. Subsection 78(1)	Subsection 78a(1), Subsection 78a(2) At all reasonable hours, upon reasonable notice, inspect any documents of the corporation with 15 specific exceptions.
15. Whether any person may receive copies of any records, books, accounts, documents.	at all reasonable hours, within a reasonable time Subsection 78(1)	Subsections 78a(1), 78a(2) at all reasonable hours where practicable upon reasonable notice, within a reasonable time. Subsection 78a(2).

Issue	Current Legislation	Recommendation in 1984 Committee Report
16. Whether person who is refused information by clerk may appeal	may apply to a court for an order in the nature of mandamus for release of documents.	may appeal to council and if dissatisfied with council decision may apply to a judge for order to release information requested. Subsection 78a(4), 78a(6)
17. Whether clerk shall prepare and keep in his possession an index of by-laws.	No, except for certain matters under s. 37 of the Planning Act and all by-laws that affect land but do not directly affect title to land. Subsection 78(2)	Yes, to be prepared by September, 1986; index to be updated annually and consolidated at least every five years. Subsection 78b(1)

Appendix III

Report of the Association of Municipalities of Ontario Special Committee on Freedom of Information and Individual Privacy, May 1978

INTRODUCTION

As an organization of municipal governments in Ontario, this Association has noted with approval the increased public interest in more open public information policies at all levels of government. It is incontestable that in a democracy the citizen should have the maximum possible access to government information, subject only to the constraints imposed by the public interest and the rights of other persons. In spite of the general acceptance of that view, remarkably little attention has been paid in Canada to the exact meaning of freedom of information, the ways in which the public interest and the rights of individuals will be protected, and the relationship of this whole question to our institutions and traditions of government. For this reason, we welcome the appointment of the Commission on Freedom of Information and Individual Privacy which we expect will shed light on these important questions.

The terms of reference of the Commission are primarily oriented to the provincial level of government, but they could be interpreted to encompass municipalities and all other governmental institutions that fall within provincial jurisdiction under the British North America Act. Because of the interdependence of all governmental institutions, we believe it is valid and appropriate for the Commission to consider its mandate in the broadest possible light. If the Commission accepts this approach, this Association would suggest that due account be taken of the significant differences between provincial and local government in Ontario. These can be summarized as follows:

Municipal councils are political entities with considerable discretion in administrative policy

Within the framework established by provincial legislation, municipalities in Ontario have traditionally exercised substantial discretion in the management of their affairs, including policies concerning information. The traditions of local autonomy are rooted in Ontario's history, and they recognize that, in a great many fields, the preferences of local residents expressed through their locally elected representatives should prevail. It is the Association's view that this approach is more relevant to Ontario society today than ever before and that the Commission's recommendations should show due regard for the diversity of communities and their municipal institutions in this province.

Municipal government is not based on the concepts of ministerial responsibility and responsible government

Unlike the provincial and federal legislatures, local councils are not organized along party lines. Municipal department heads report to council as a whole rather than to a minister accountable to the legislature. As a result, specific direction concerning the provision of information to the public is not always readily available to municipal staff. Without an individual political "master" to discuss their departmental concerns in public, municipal public servants often find themselves dealing directly with the public and the news media. In some cases, the law requires municipal officials to disclose information regardless of the wishes of council.

Municipal government is the most open of the three levels in Canada today

Under the present legislation, municipal councils are not able to impose the regime of secrecy that characterizes the other levels of government. Regular municipal council meetings must be open to the public and, in most cases, council committee meetings are held in public. Municipal civil servants are not subject to the extreme provisions imposed by the oath of secrecy and the Offical Secrets Act; their advice to the political level is offered either in reports that are made public when submitted to council or a committee or, orally, in open session on the floor of the council.

The present legislation provides the citizen with the right to inspect a wide range of municipal documents. Although the present legislative framework has a number of faults that are identified in this brief, there is no question that it has established a tradition and a foundation for greater public access to information than is generally provided by the other two levels of government.

PRESENT PROVISIONS REGARDING INFORMATION IN MUNICIPAL GOVERNMENT

A multitude of legislative provisions govern the provision of information at the municipal level. The situation is further complicated by the fact that municipalities are generally considered to be prohibited from engaging in any activity not specifically provided for by statute. For example, while the legislation provides that all regular meetings of councils and local boards be open to the public, its silence on the question of committee meetings has been interpreted by some to mean that these meetings must be closed.

Recognizing the hazards of oversimplifying the present legislation, the Association offers the following sketch of the terms of the present legislation regarding access to government information.

Attendance at meetings of council or local boards

In general, the following rules apply to regular meetings of council or a local board:

- neither the public nor the press has a common-law right to attend meetings of a council or of its committees but in Ontario this common-law rule has been modified by statute;
- regular meetings of council are open to the public and may not be closed;
- special meetings of council may be either open or closed as the public interest requires;
- committee of the whole meetings are closed meetings (attendance by non-members is a privilege, not a right);
- voting must be open; a vote taken by any method of secret voting is of no effect.

Examination of records

Sections 215 and 216 of The Municipal Act provide the general basis for public examination of municipal records: the clerk is the custodian of the records and must make them available for inspection and provide copies in return for a fee that may be determined by council. It is important to remember, however, that section 216 and other legislation contain a number of important exceptions to this general rule. For example, reports from an official to the council, executive body or a committee of council are not considered to be in the possession of the clerk with the result that the individual has no right to examine or secure copies of them. Similarly, The Municipal Elections Act places certain election documents in the public domain but restricts access to the contents of the ballot box.

Information provided by municipal officials

Where factual information provided by elected or appointed officials is erroneous, the official may be liable for damages suffered by the recipient. The courts have held that permanent staff have a greater liability than politicians in these cases because they are more likely to give the information knowing it will be relied on.

SUGGESTED APPROACH

The Association suggests that the Commission's general approach be to broaden and improve the scope for access to public information that already exists in Ontario's local governments. Such an approach must recognize the distinctions between municipal government and the other levels of government in Canada and it should support and enhance our traditions of local autonomy.

In effect, this means that the Commission's recommendations regarding local government should be consistent with the general philosophy it adopts for provincial government and its agencies. There are really only two possible general philosophies:

- all information should be excluded from the public domain unless access is specifically authorized by law; or

- all information should be within the public domain unless access is specifically restricted by law.

The former philosophy reflects the Canadian-British traditions of government and is the basis for information-access legislation at both provincial and municipal levels in Ontario. The latter is the Swedish-American philosophy and the one most often espoused by the proponents of greater public access to government information in this country.

The Canadian-British tradition:
access permitted only by specific authority

The advantages of the present arrangement lie in the discretion it allows to governments to deal with individual cases on their merits, in keeping with the basic tenet of representative democracy that the elected representative is in the best position to determine the public interest in deciding whether information should be withheld. This arrangement is probably less expensive than systems where virtually unlimited amounts of information must be produced to fulfill disclosure requirements.

The disadvantages of this philosophy lie in the possibility of abuse of the discretion it allows. In large government organizations, elected representatives cannot know of every contact between the bureaucracy and the citizen seeking information and do not want to become involved in routine matters of administration. Given the pervasive role played by government in our daily lives, contact between citizen and government is much more extensive than ever before. And, in any large organization, there are always those who are attempting to protect their position or inflate their apparent importance through denial of information. The present system in Ontario also suffers from a multiplicity of varied, complex and incomplete authorities for public access to local government information. These defects leave ample scope for elected or appointed officials who wish to conceal information from the media and the public.

The Swedish-American system: access guaranteed unless restricted by specific authority

The Swedish system of public access to government information has been in place since 1776. Beginning in 1966, the government of the United States has adopted a similar model. The main features of this concept are:

- the citizen has a right to see and publish governmental information not specifically restricted;

- public servants are directly responsible under the law and can be prosecuted for breach of duty; and

- disputes are settled through a tribunal (in Sweden it is the Supreme Administrative Court of the Ombudsman).

It is important to remember that neither the Swedish nor the American systems of government provides a direct link of accountability between the members of the executive branch and the legislature.

The primary advantage of this approach is that it is capable of providing clear guidance to the citizen, the elected representative and the civil servant concerning rights of access to government information.

The disadvantages relate to the impact that such a change could have on our public institutions. It would require a fundamental reorientation of the thinking of government and a re-assessment of all public information policies and all documents. To the extent that public servants could attract controversy because of the documents they produce, there could be a reduction in the perceived political responsibility of the elected representative and in the perceived impartiality and anonymity of the civil service. There is no question that the administrative costs of providing for a vastly increased degree of public access would be significant. Finally, there is the problem of defining exceptions to the general rule of openness and the possibility that the spirit of the law will be frustrated by excessively broad interpretation of permissible exceptions.

Because of the existing level of public access to information that they provide, municipalities would have less difficulty in adapting to the Swedish-American model than would the provincial government. It follows that municipalities would also be able to accommodate an improved version of the present Canadian-British system. Regardless of the philosophic aproach taken by the Commission, it is essential that the legislation be amended to remove the confusion and inconsistency of the present provisions governing public access to local government information. The Association understands that the Commission is engaging in research on this matter, and the Association would be pleased to meet with the Commission's researchers to provide guidance concerning the legislative changes which should be considered.

RECOMMENDATIONS

1. The Association endorses, as a general principle, the right of the individual in society to full, objective and timely government information, and the corresponding duty of municipal government to make available information about its affairs.

2. The Association strongly supports a comprehensive review and updating of all legislation governing public access to municipal information with a view to its consolidation and clarification in accordance with the following recommendations:

a) The Association would support the introduction of legislation which, having regard to the distinctive nature of municipal government, would establish clear rules concerning the conduct of public business in municipalities by stipulating that all meetings of councils, committees of council, and local boards shall be open to the public subject to certain specific exceptions (For example, when personnel, labour relations, property acquisitions and advice of counsel on pending or possible litigation matters are being dealt with).

b) The legislation should place all municipal records in the public domain and specify any exceptions that are to be made to this general rule.

c) Municipalities should not be compelled to provide copies of documents that are filed with the municipality and subject to copyright or similar restrictions (e.g. architects' plans). Councils should be allowed to set reasonable fees and establish other reasonable procedures for the production and inspection of all documents.

d) Disputes concerning freedom of information should be resolved by the courts or by a tribunal set up for such purpose. The courts or tribunal should be empowered to impose conditions on the release and use of information.

POOR

QUALITY

ORIGINAL